

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Olga Bentin	Team: Squad #4	CCRB Case #: 201906068	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 06/30/2019 11:20 PM	Location of Incident: § 87(2)(b)	Precinct: 104	18 Mo. SOL 12/30/2020	EO SOL 8/16/2021	
Date/Time CV Reported Mon, 07/01/2019 2:40 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 07/11/2019 10:50 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Patrick Nessler	06263	963668	104 PCT
2. Officers			104 PCT
3. SGT Angelica Casilimas	02731	938188	104 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Stephen Schneidawin	00255	951221	104 PCT
2. POM Daniele Petito	26076	964213	104 PCT
3. POM Diego Gutierrez	23436	962455	104 PCT
4. POM John Lipori	04315	966168	104 PCT
5. POM Milton Reyes	03441	931026	PBQ/N
6. POF Genesis Rosario	09877	964742	104 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Patrick Nessler	Force: Police Officer Patrick Nessler used physical force against § 87(2)(b)	§ 87(2)(b)
C.SGT Angelica Casilimas	Abuse: Sergeant Angelica Casilimas forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
D.SGT Angelica Casilimas	Discourtesy: Sergeant Angelica Casilimas spoke discourteously to § 87(2)(b)	§ 87(2)(b)

### Case Summary

On July 1, 2019, Sgt. Angelica Casilimas contacted the IAB Command Center and filed this complaint on behalf of § 87(2)(b). On July 11, 2019, the complaint was received at the CCRB.

On June 30, 2019, at approximately 11:20 p.m., § 87(2)(b) called 911, stated that her son, § 87(2)(b) assaulted her, and requested police to 1741 Norman Street, Apartment 1L, in Queens. PO Patrick Nessler, PO Stephen Schneidawin, PO Daniele Petito, PO Diego Gutierrez, and PO John Lipoti, and Sergeant Angelica Casilimas, all from the 104<sup>th</sup> Precinct, responded to the call. Officers grabbed and pulled § 87(2)(b) to the ground (**Force: Allegation A, § 87(2)(g)**). PO Nessler allegedly kicked § 87(2)(b) in the face several times (**Force: Allegation B, § 87(2)(g)**). § 87(2)(b) was removed to the hospital (**Abuse of Authority: Allegation C, § 87(2)(g)**).

Sgt. Casilimas and § 87(2)(b)'s sister, § 87(2)(b) engaged in a verbal dispute. § 87(2)(b) threatened to fight Sgt. Casilimas and Sgt. Casilimas replied, "Fucking do it. Fucking do it" (**Discourtesy: Allegation D, § 87(2)(g)**).

No arrests or summonses resulted from this incident.

The investigation was provided with 10 BWC recordings of this incident (located in Investigative Actions #73 to 82).

### Findings and Recommendations

**Allegation (A) Force: Officers used physical force against § 87(2)(b)**

**Allegation (B) Force: Police Officer Patrick Nessler used physical force against § 87(2)(b)**

**Allegation (C) Abuse of Authority: Sergeant Angelica Casilimas forcibly removed § 87(2)(b) to the hospital.**

It is undisputed that officers used force against § 87(2)(b) and that he was removed to the hospital. § 87(2)(g)

The investigation has established the following facts. The 911 audio recording and the EVENT materials (BR 02 and BR 03) document that on June 30, 2019, at approximately 11:16 p.m., § 87(2)(b) called 911 and said that her son, § 87(2)(b) banged her head against a wall, threw a bottle at her head, and choked her. She also reported that § 87(2)(b) was fighting with his pregnant sister. § 87(2)(b) locked herself in the bathroom and reported that she was worried about her safety.

§ 87(2)(b) (BR 01) acknowledged that he argued with § 87(2)(b) over his sister and claimed that § 87(2)(b) was intoxicated. § 87(2)(b) stated that the argument was verbal and that he did not hurt his mother. At some point during the argument, § 87(2)(b) went to the bathroom and called 911. § 87(2)(b) then went to his grandmother's bedroom and remained there until the police arrived. Several minutes later, § 87(2)(b) heard the officers arrive and speak to § 87(2)(b) in the living room. § 87(2)(b) then exited his grandmother's bedroom, entered the living room, walked past the officers, and entered the kitchen. PO Patrick Nessler, PO Stephen Schneidawin, PO Daniele Petito, PO Diego Gutierrez, and PO John Lipoti followed § 87(2)(b) to the kitchen. The officers, without saying anything, surrounded § 87(2)(b) grabbed his arms, placed his hands behind his back, and handcuffed him. § 87(2)(b) did not resist. The officers asked § 87(2)(b) to sit down on the kitchen floor, but § 87(2)(b) refused, because the floor was dirty. The officers then grabbed § 87(2)(b) by his arms and pulled him down to the ground, causing § 87(2)(b) to get onto his knees. PO Nessler then kicked § 87(2)(b) in the face with his left or right knee five or six times, consecutively. § 87(2)(b) sustained a small cut on his lower or upper lip and bruising on his nose as a result. The officers pulled § 87(2)(b) backwards so that he sat on his buttocks. The officers then lifted § 87(2)(b) off the floor and walked him out of the apartment. § 87(2)(b) was transported to

§ 87(2)(b) and was given “Depakote” to stabilize his mood. § 87(2)(b)'s medical records from § 87(2)(b) (BR 04) document that § 87(2)(b) was brought to the hospital while in the police custody for evaluation of aggressive behavior, “likely secondary to primary psychiatric disorder.” § 87(2)(b) stated that he broke a door at his grandmother’s house and that it started over a “little thing.” § 87(2)(b) complained of mood changes for many years and that he did not receive any treatment. § 87(2)(b) was diagnosed with schizophrenia and bipolar disorder, and given Depakote. § 87(2)(b) was tested positive for THC. His blood alcohol concentration (BAC) results were 0.08%; he was “legally intoxicated.” The records do not document any physical injuries.

PO Petito's BWC recording (BR 06), at 3:17, shows § 87(2)(b) standing in the living room. PO Petito asks § 87(2)(b) to sit down. § 87(2)(b) yells, “Ma... § 87(2)(b) Tell her what she is doing? She is lying.” PO Petito again asks § 87(2)(b) to sit down. § 87(2)(b) replies, “No, I am not arrested. I am not taking to you,” and walks into the kitchen. At 3:40, PO Petito follows § 87(2)(b) to the kitchen, says, “You got to sit,” and attempts to grab § 87(2)(b) by his left arm. § 87(2)(b) shrugs his arm and yells at the officers that he is not getting arrested. PO Petito asks § 87(2)(b) to calm down. At 3:54, there is some struggle between the officers and § 87(2)(b) as they try to restrain him. § 87(2)(b) resists. § 87(2)(b) yells, “Ma, ma, ma.” At 4:21, § 87(2)(b) says, “He kneed me.” The video does not capture § 87(2)(b) being kneed. At 4:36, the officers handcuff § 87(2)(b). At 4:43, § 87(2)(b) turns to the officer to his left, who appears to be PO Nessler, and says, “You kneed me in my face, bitch.” § 87(2)(b) continues to resist and the officers asks him to relax. At 5:08, it appears that § 87(2)(b) is bent over face down. He says, “Yo, Nessler, why you kneed me in my face?” At 5:44, § 87(2)(b) turns to PO Nessler and says, “You kneed me in my face. I am not getting arrested.” He then drops to the floor on his own. At 6:07, a male tells § 87(2)(b) to calm down so they could leave the house. At 14:14, the officers escort § 87(2)(b) out of the apartment and place him into an ambulance. The video does not depict any injuries on § 87(2)(b)'s face.

PO Genesis Rosario’s BWC recording (BR 07) captures the same incident as discussed above, with the following additional information. At 2:38, PO Rosario and Sgt. Casilimas enter the kitchen. The video captures the struggle between PO Nessler, PO Schneidawin, PO Pepito, PO Gutierrez, PO Lipoti, and § 87(2)(b). At 2:40, it appears that PO Nessler thrusts his hips forward, which is consistent with a kneeling motion. The video does not show where or if PO Nessler makes contact with § 87(2)(b).

Between 5:58 and 7:10 minutes of PO Milton Reyes’ BWC recording (BR 08), § 87(2)(b) tells the officers that she does not want them in the apartment, that she does not want § 87(2)(b) to be arrested, and that she only wants him out of the apartment. PO Reyes, Sgt. Casilimas and § 87(2)(b) speak in Spanish. § 87(2)(b) denied being injured and ask the officers to escort § 87(2)(b) because he does not reside in the apartment. § 87(2)(b) also tells the officers that § 87(2)(b) threw an empty bottle at her, but that it did not hit her. At 7:12, Sgt. Casilimas asks § 87(2)(b) if § 87(2)(b) suffers from any mental condition or takes medications. § 87(2)(b) replies that § 87(2)(b) suffers from bipolar disorder and that he does not take any medications. At 9:39, EMS arrives. § 87(2)(b) refuses medical attention and says that she is alright. At 9:53, § 87(2)(b) tells Sgt. Casilimas and the rest of the officers that § 87(2)(b) did not break the door. § 87(2)(b) is heard yelling in the background; § 87(2)(b) asks him to be quiet. At 10:35, Sgt. Casilimas asks § 87(2)(b) in Spanish if § 87(2)(b) is intoxicated. § 87(2)(b) then asks the same question of § 87(2)(b)'s cousin, M1. M1 nods without saying anything. Between 12:04 and 12:40, § 87(2)(b) argues with the officers, saying that they should not have used force against § 87(2)(b). At 12:40, Sgt. Casilimas tells § 87(2)(b) that § 87(2)(b) will be checked out by EMS. At 12:56, the officers escort § 87(2)(b) from the apartment. § 87(2)(b) and § 87(2)(b) remain in the apartment. Between 13:12 and 20:23, PO Reyes speaks to EMS and suggests that they should speak to § 87(2)(b) who

said that § 87(2)(b) is bipolar. PO Reyes does not know if § 87(2)(b) is taking any medications. EMS then goes to speak to § 87(2)(b) EMS and § 87(2)(b) speak privately. PO Reyes stands several feet away. The camera does not capture EMS or § 87(2)(b) but their voices are heard. EMS tells § 87(2)(b) that they are going to take § 87(2)(b) to the hospital. She replies, “Yes, to the hospital.” § 87(2)(b) says that § 87(2)(b) is depressed and that he does not take any medications.

§ 87(2)(g)

§ 87(2)(b) PO Nessler stated that when § 87(2)(b) walked to the kitchen, the latter created a potentially dangerous situation for himself and the officers. PO Nessler, PO Lipori, and PO Gutierrez followed § 87(2)(b) and attempted to restrain him by grabbing his arms and placing them behind his back. § 87(2)(b) resisted by flailing his arms, pulling them away from the officers, and moving further away from them. PO Nessler managed to grab § 87(2)(b) by his left arm and brought it behind his back. After struggling with § 87(2)(b) for several seconds, the officers pulled § 87(2)(b) and forcibly took him down to the floor. PO Nessler did not recall kneeing § 87(2)(b) in the face, but said, “It could definitely be positive, while I was trying to take him down... Possibly his face hit my knee.” PO Nessler did not see any visible injuries to § 87(2)(b)’s face. PO Nessler reviewed the above discussed portion of PO Rosario’s BWC recording. PO Nessler denied kneeing § 87(2)(b) and said, “I do not see myself kneeing him. He was flailing his arms and we were just trying, you know, get his hands behind his back,” and, “He § 87(2)(b) was resisting. I was just trying to gain control of him.”

After § 87(2)(b) was placed in the ambulance, Sgt. Casilimas came out and said that § 87(2)(b) would be removed to the hospital as an emotionally disturbed person. Sgt. Casilimas did not discuss her decision with the officers. Based on PO Nessler’s observation of § 87(2)(b) the latter believed that § 87(2)(b) was a threat to himself and to his mother, who initially called 911 and reported that § 87(2)(b) assaulted her.

PO Nessler’s TRI and AIDED reports (BR 10 and BR 05) are consistent with his account. The photograph enclosed in the TRI report do not capture any visible recent facial injuries.

§ 87(2)(g)

§ 87(2)(b) Sgt. Casilimas did not see PO Nessler knee § 87(2)(b) in the face. Sgt. Casilimas explained that at the time the officers were trying to restrain § 87(2)(b) she was dealing with § 87(2)(b)’s cousin, M1, who was trying to intervene. Aside from the officers grabbing and bringing § 87(2)(b)’s arms behind his back, Sgt. Casilimas did not see them use any other force against § 87(2)(b). Sgt. Casilimas acknowledged that it was her sole decision to remove § 87(2)(b) to the hospital, because she believed that he was a threat to his mother, who called 911 to report that he was acting violently towards her. Sgt. Casilimas was also informed by § 87(2)(b) that § 87(2)(b) was intoxicated or possibly under the influence of drugs, and suffered from depression and bipolar disorder, and that he did not take any medications.

§ 87(2)(g)

§ 87(2)(b) PO Lipori acknowledged grabbing § 87(2)(b) by his left or right arm, and denied using any other force against him. PO Lipori did not remember what the other officers were doing. § 87(2)(b) resisted by pulling away from the officers and attempted to drop onto his knees, to avoid being handcuffed. PO Lipori did not see PO Nessler knee § 87(2)(b) in the face. PO Lipori also prepared a TRI report (BR 13), which is consistent with his account.

An officer must use only that force reasonably necessary to gain control of a subject or to effect an arrest. NYPD Patrol Guide Procedure 221-01 (BR 14) NYPD Patrol Guide Procedure 221-13 (BR 15) requires that members of service take into protective custody and remove to the hospital any individual that a member of service reasonably believes is an Emotionally Disturbed Person, the definition of which is twofold, and applies only if a person both “appears to be mentally ill or temporarily deranged” and “is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others.” Officers are instructed

to take reasonable measures to prevent behavior that constitutes an immediate threat of serious physical injury.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (D) Discourtesy: Sergeant Angelica Casilimas spoke discourteously to § 87(2)(b)**

§ 87(2)(b) did not make this allegation. It was captured in Sgt. Casilimas' BWC recording (BR 22). At 5:00, § 87(2)(b) yells at the officers to get out of the apartment. § 87(2)(b) states that the house belongs to her and that she is on the lease. At 5:19, Sgt. Casilimas tries to speak to § 87(2)(b) says, "I am not talking to you," and, "I will smack the shit out of you." Sgt. Casilimas replies, "Fucking do it. Fucking do it. Fucking do it. Fucking do it." § 87(2)(b) § 87(2)(b) called Sgt. Casilimas, "Stupid." § 87(2)(b) asks § 87(2)(b) and Sgt. Casilimas to stop arguing.

Sgt. Casilimas (BR 11) acknowledged making the above statement to § 87(2)(b) and did not dispute the interaction captured in the BWC recording. Sgt. Casilimas explained that her emotions took over when § 87(2)(b) said that she was going to "beat the shit" out of her. There was no other reason why Sgt. Casilimas made the above statement to § 87(2)(b).

NYPD Patrol Guide Procedure 203-10 (BR 16) instructs the officers to refrain from using discourteous and disrespectful remarks toward civilians. In DAO-DCT case number 2017-17276 (BR 23), the trial commissioner held that in a violent and stressful street encounter, "language which would ordinarily be inappropriate in dealing with civilians may be excused."

§ 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 17).
- This is the first CCRB complaint to which Denis § 87(2)(b) has been a party (BR 18).
- PO Patrick Nessler has been a member-of-service for two years and he has been a subject in one prior CCRB complaint and one allegation, which was closed as unsubstantiated.
- Sgt. Angelica Casimilas has been a member-of-service for 14 years and has been a subject in one other CCRB complaint (201909168) which involves allegations of refusal to provide

shield number and interference with recording. The case was closed as complainant unavailable and is currently pending the Board review.

**Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- As of December 24, 2019, no Notice of Claim has been filed regarding this incident (BR 21).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
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[REDACTED]  
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Squad No.:      4

Investigator:      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_  
                                 Signature                      Print Title & Name                      Date

Squad Leader:      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_  
                                 Signature                      Print Title & Name                      Date

Reviewer:      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_  
                                 Signature                      Print Title & Name                      Date